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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,330

Applicant(s)

MCGILL, SHANE ROBERT

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. The Amendment filed August 19, 2005 has been entered. Claims 68-82 have been added. Claims 57-82 remain pending in the application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 79, 81, 82 are rejected under 35 U.S.C. 102(b) as being anticipated by Boulard (US 4751357).
4. Boulard '357 teaches a method of blending a food product in a container (item 27) in charging the container with food (i.e. preparation), placing the container in a microwave enclosure (item 1), heating the food (i.e. cooking) in the microwave, and blending the food in the microwave enclosure (via item 29) as recited in claim 79, providing the container with a blending element as recited in claim 81, and selectively driving the blending element with a drive associated with the microwave enclosure (item 25) as recited in claim 82 (See Column 1, lines 10-20, Column 2, line 61 to column 3, line 8, Column 3, lines 14-68).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 57,59,60,62,64,67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) and Porter (GB 2159027 A).

7. Regarding claims 57,59,60, 64,67, Boulard '357 teaches a method of blending a food product in a container (item 27) in which the container is charged with food, the container is fitted with a blending element (accessory 29), the food is subjected to microwave energy to heat the food and bring the food product from one temperature to a blending, or cooking temperature, in a microwave enclosure (item 1) , the blending element is releasable located in driving engagement with a drive external to the enclosure and extending through and adjacent to the top of the container (item 25) such that the container are drive are relatively moved to engage/disengage the blending element and container as a unit from the drive as recited in claims 59,60 and 67, the container is held against rotation (i.e. via items 4 and 38 in combination with items 39) as recited in claim 74, and the food is blended in the container as recited in claim 57 (See Column 1, lines 10-20, Column 2, line 61 to column 3, line 8, Column 3, lines 14-68). Although '357 does not explicitly state the food is dispensed from the container, it would have been obvious to dispense the food from the container after cooking , since

the intent of cooking food is to consume it and one would have to dispense food from the container in order to consume it. Boulard '357 is silent in teaching the container includes a closure member, the container with the product is removed from cooled storage prior to placing in the microwave, and the food is blended after heating in the microwave as recited in claim 57.

8. Astegno et al. '181 is the national phase of WO 98/336670, and as such must include the same specification. Thus '181 is relied on as a translation, where needed, for WO 98/336670. Astegno et al. '670 also teach a container for blending food that includes a blending element (item 2) that may be heated in a microwave oven, wherein the blending element extends through the upper end of the container (i.e. via item 10 in Figure 1, Abstract). Astegno et al. '670 teach the container advantageously includes a closure member that provides an orifice for the passage of the blending element so that there is no risk of spilling out of the container during blending, and that the container can be further sealed (with either lid 11 or 9 plus 12 in Figures 3 and 4) so that a food charged container can be refrigerated or frozen, immediately removed from the refrigerator or the freezer (i.e. without a waiting period to save time for the user), and placed within a microwave oven. Astegno et al. '670 also teach adding a frozen product to the container (e.g. ice) prior to the blending steps. Additionally, one can store any unused portion of the prepared food after heating, and thus the storage of the prepared food is facilitated (Page 4, lines 10 to Page 5, line 6 and Page in light of Column 2, line 52 to Column 3 line 17 and Column 4, lines 3-6 of '181 and Figure 1).

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9. Porter also teaches cooking in a microwave oven with a container that includes a blending element. Porter teaches some recipes may require blending after heating (Abstract, Page 2, lines 15-25).

10. Therefore, it would have been obvious to modify Boulard '357 and include a closure member, since Astegno et al. '670 teach providing a microwaveable food blending container having a blending element therein with a closure member that provides an orifice for the passage of the blending element is advantageous so that there is no risk of spilling out of the container during blending. It would have been further obvious to modify Boulard '357 and store the product food holding container in cooled storage, whether it is unprepared or an unused prepared product, remove it from storage, and subsequently place the container into the microwave oven, since Astegno et al. '670 teach it is desirable to be able to store a blend in the container prior to mixing in either a refrigerator or freezer, whether was previously unprepared or is an unused portion of previously prepared food, in order to save time for the user as well as facilitate storage of prepared foods. It also would have been further obvious modify Boulard '357 and blend after heating, depending on the desired recipe since William teaches some cooking recipes require blending after cooking when the food is cooked in a container with a blending element in the microwave.

11. Regarding claim 62, Boulard '357 teach delivering the filled container to the dispensing location (i.e. the microwave enclosure) and Boulard '357 teach the purpose of the container is to cook the food, but is silent in teaching the container is filled with frozen product transported to a dispensing location at which the product is heated and

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blended for the customer to consume out of the container. As discussed above in paragraph 8, Astegno et al. teach it is desirable for a consumer to blend and heat refrigerated or frozen food (including ice). Therefore, it would have been obvious to add a frozen product to the container and transport the container to the dispensing location (i.e. the microwave enclosure) of Boulard '357 so that the consumer can consume the product from the container, depending the desired product to be made (i.e. starting with frozen, refrigerated, or room temperature product) and depending on the desired type of dispenser and amount of dirty dishware since Boulard '357 teach delivering the filled container to the dispensing location (i.e. the microwave enclosure) , Astegno et al. teach it is desirable for a consumer to blend and heat refrigerated or frozen food (including ice) in addition to the conventional room temperature food , and Boulard '357 teach the purpose of the container is to cook the food and it was notoriously well known to consume food directly from a cooking container and avoid generating additional dirty dishware or dispense the food onto a dish or into a cup or bowl for consuming, which generates additional dirty dishware.

12. Claims 58 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) and Porter (GB 2159027 A), as applied to claims 57,59,60,62,64,67 above, further in view of Boulard (US 4937418) .

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13. Boulard '357 (or '357) is silent in teaching the microwave energy is directed outwardly from an internal region in the container, as recited in claim 58, such as by an antennae means located in a member extending through the food as recited in claim 61.

14. Like '357, Boulard '418 (or '418) also teaches a container with a blending element placed therein for blending and heating in a microwave enclosure wherein a motor for rotating the blending element is positioned outside of the area exposed to microwave energy and the container is prevented from rotating during mixing. '418 teaches conventional heating in the microwave does not provide a uniform distribution of microwave energy throughout a bulk material. '418 teaches in order to obtain uniform heating in a microwave oven, one should use a blending element that includes internal antennae (e.g. item 8) to heat a container holding bulk material to evenly distribute microwave energy throughout the entire bulk of material in the container as recited in claims 58 and 61. '418 teaches providing the internal antennae integrated with the blending element will *assure* the microwaves are distributed evenly *even if* the blending element rotates slowly (column 1, lines 9-23 ,45 –68 Figures). Therefore, it would have been obvious to modify the method of Boulard '357 and include antennae located in a member extending through the food such that microwave energy is directed outwardly from an internal region of the container as recited in claims 58 and 61, since '418 teaches such antennae with the blending element (i.e. the member extending through the food) will assure that there is a uniform distribution of microwave energy regardless of the blending element speed.

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15. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et al. (US 6193181 B1) and Porter (GB 2159027 A), as applied to claims 57,59,60,62,64,67 above, further in view of Levinson et al. (US 5925394).

16. Boulard '357 et al. teach food preparation by heating by microwave and blending, but fail to teach generating carbonation when blending. Levinson et al. also teach preparing a food by heating by microwave and blending. Levinson et al. teach forming a frozen whipped cream product comprising carbonated beverage, such as soda or champagne, wherein carbon dioxide is generated during mixing and including such carbonated beverages (Column 4, lines 58-64, Column 5, line 58, Column 13, line 15 to Column 14, line 3). Therefore, it would have been obvious to modify Boulard '357 and including blending mixes that generate carbonation within the product, depending on the particular desired food to be prepared since Boulard '357 teach a container for heating by microwave, blending, and serving, and Levinson et al. teach a whipped cream flavored by carbonated beverage can be prepared by heating by microwave, and blending in a single container, which would generate carbonation within the final product.

17. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et al. (US 6193181 B1) and Porter (GB 2159027 A), as applied to claims 57,59,60,62,64,67 above, further in view of Shulze (DE 3930337A).

18. Boulard '357 is silent in teaching the microwave energy is directed from at least two different directions per se. Like Boulard '357, Shulze also teaches a container used for blending and heating in a microwave enclosure wherein the blending element inside the container is connected to a drive external the microwave energy enclosure. Shulze further teaches utilizing a microwave oven with microwave energy being directed from opposite sides of the container. Shulze teaches that as result of utilizing a blending element and energy from opposite sides of the container, the distribution of energy is more uniform and independent of the microwave distribution (See Abstracts).

Therefore, it would have been obvious to modify Boulard '357 and direct the microwave energy from at least two different directions since Shulze teaches this type of microwave oven in combination with blending while heating will result in a more uniformly heated material.

19. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) and Porter (GB 2159027 A), as applied to claims 57,59,60,62,64,67 above, further in view of Woodman (US 2760762).

20. Boulard '357 teach the container and blending element are kept together for inserting into the microwave enclosure and removing therefrom, but is silent in teaching the blending element is an integral part of the container. Like Boulard '357, Woodman also teaches a container with a blending element located on the bottom container wherein the means for rotating the blending element is above the upper end container.

However, Woodman teaches it is easier to assemble containers like this when the blending element is already an integral part of the bottom of the container so that one only needs to position the shaft into the blending element (Column 1, lines 15-62).

Therefore, it would have been obvious to make the blending element an integral part of the container since Woodman teaches by providing a blending element as an integral portion of the base of a container assembly is made easier.

21. Claims 68,70,71,73,75,78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) .

22. Regarding claims 68,70,71,73, 75,78, Boulard '357 teaches a method of blending a food product in a container (item 27) in which the container is charged with food, the container is fitted with a blending element (accessory 29), the food is subjected to microwave energy to heat the food and bring the food product from one temperature to a blending, or cooking temperature, in a microwave enclosure (item 1) , the blending element is releasable located in driving engagement with a drive external to the enclosure and extending through and adjacent to the top of the container (item 25) such that the container are drive are relatively moved to engage/disengage the blending element and container as a unit from the drive as recited in claims 70,71, and 78, the container is held against rotation (i.e. via items 4 and 38 in combination with items 39) as recited in claim 75, and the food is blended in the container as recited in claim 68(See Column 1, lines 10-20, Column 2, line 61 to column 3, line 8, Column 3, lines

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14-68). Although '357 does not explicitly state the food is dispensed from the container, it would have been obvious to dispense the food from the container after cooking , since the intent of cooking food is to consume it and one would have to dispense food from the container in order to consume it. Boulard '357 is silent in teaching the container includes a closure member and is removed from storage, with the product, prior to placing in the microwave, as recited in claim 68, and the container is filled with frozen product transported to a dispensing location at which the product is heated and blended for the customer to consume out of the container as recited in claim 73.

23. Astegno et al. '181 is the national phase of WO 98/336670, and as such must include the same specification. Thus '181 is relied on as a translation, where needed, for WO 98/336670. Astegno et al. '670 also teach a container for blending food that includes a blending element (item 2) that may be heated in a microwave oven, wherein the blending element extends through the upper end of the container (i.e. via item 10 in Figure 1, Abstract). Astegno et al. '670 teach the container advantageously includes a closure member that provides an orifice for the passage of the blending element so that there is no risk of spilling out of the container during blending, and that the container can be further sealed (with either lid 11 or 9 plus 12 in Figures 3 and 4) so that a food charged container can be refrigerated or frozen, immediately removed from the refrigerator or the freezer (i.e. without a waiting period to save time for the user), and placed within a microwave oven. Astegno et al. '670 also teach adding a frozen product to the container (e.g. ice) prior to the blending steps. Additionally, one can store any unused portion of the prepared food after heating, and thus the storage of the prepared

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food is facilitated (Page 4, lines 10 to Page 5, line 6 and Page in light of Column 2, line 52 to Column 3 line 17 and Column 4, lines 3-6 of '181 and Figure 1).

24. Therefore, it would have been obvious to modify Boulard '357 and include a closure member, since Astegno et al. '670 teach providing a microwaveable food blending container having a blending element therein with a closure member that provides an orifice for the passage of the blending element is advantageous so that there is no risk of spilling out of the container during blending. It would have been further obvious to store the product food holding container, whether it is unprepared or an unused prepared, remove it from storage, and subsequently place the container into the microwave oven, since Astegno et al. '670 teach it is desirable to be able to store a blend in the container prior to mixing, whether was previously unprepared or is an unused portion of previously prepared food, in order to save time for the user as well as facilitate storage of prepared foods. Furthermore, it would have been obvious to add a frozen product to the container and transport the container to the dispensing location (i.e. the microwave enclosure) of Boulard '357 so that the consumer can consume the product from the container, depending the desired product to be made (i.e. starting with frozen, refrigerated, or room temperature product) and depending on the desired type of dispenser and amount of dirty dishware since Boulard '357 teach delivering the filled container to the dispensing location (i.e. the microwave enclosure), Astegno et al. teach it is desirable for a consumer to blend and heat refrigerated or frozen food (including ice) in addition to the conventional room temperature food, and Boulard '357 teach the purpose of the container is to cook the food and it was notoriously well known

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to consume food directly from a cooking container and avoid generating additional dirty dishware or dispense the food onto a dish or into a cup or bowl for consuming, which generates additional dirty dishware.

25. Claims 69 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) as applied to claims 68,70,71,73,75,78 above, further in view of Boulard (US 4937418) .

26. Claims 69 and 72 are the same limitations as claims 58 and 61, respectively. Claims 69 and 72 are rejected for the same reasons stated for the rejection of claims 58 and 61, respectively, above.

27. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) as applied to claims 68,70,71,73,75,78 above, further in view of Levinson et al. (US 5925394).

28. Claim 74 is the same limitation as claim 63. Claim 74 is rejected for the same reasons stated for the rejection of claim 63 above.

29. Claim 76 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et la.

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(US 6193181 B1) as applied to claims 68,70,71,73,75,78 above, further in view of Shulze (DE 3930337A).

30. Claim 76 is the same limitation as claim 65. Claim 76 is rejected for the same reasons stated for the rejection of claim 65 above.

31. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) in view of Astegno et al. (WO 98/336670) evidenced by Astegno et al. (US 6193181 B1) as applied to claims 68,70,71,73,75,78 above, further in view of Woodman (US 2760762).

32. Claim 77 is the same limitation as claim 66. Claim 77 is rejected for the same reasons stated for the rejection of claim 66 above.

33. Claim 80 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boulard (US 4751357) as applied to claims 79,81,82 above, further in view of Porter (GB 2159027 A).

34. Boulard '357 teaches heating and blending, as well as a blending element that can be turned engaged or disengaged with the motor (e.g. illustrated in Figure 1) , but is silent in explicitly teaching blending after heating. Porter also teaches cooking in a microwave oven with a container that includes a blending element, and further teaches some recipes may require blending after heating (Abstract, Page 2, lines 15-25).

Therefore it would have been obvious to modify '357 and blend after heating, depending on the desired recipe since William teaches some cooking recipes require blending

after cooking when the food is cooked in a container with a blending element in the microwave.

Response to Arguments

35. Applicant's arguments, with respect to the rejection(s) of claim(s) 57, 59, 62 are under 35 U.S.C. 102(a) as being anticipated by Astegno et al. (WO 98/336670) evidenced by Astegno et al. (US 6193181 B1) in light of the amended claim 57 have been fully considered and are persuasive, since Astegno et al. do not teach blending in the microwave enclosure. Therefore, the rejection has been withdrawn. Additionally, the subsequent rejections of claims 58,60,61,63-67 made under 35 U.S.C. 103(a) as being unpatentable over Astegno et al. (WO 98/336670) evidenced by Astegno et al. (US 6193181 B1) in view of the various secondary references have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth above.

Conclusion

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 8:00AM-4:30PM M-F.


37. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

38. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

39. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen 
Examiner
Art Unit 1761

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER
11/14/05